

CC:TL-N-6020-89
VWATERS

10 JUL 1989

District Counsel, San Jose W:SJ
Attn: Irvin W. Fegley

Acting Chief, Tax Shelter Branch

[REDACTED]

This memorandum is in response to your April 22, 1989, request for post-review of an advisory opinion issued by your office regarding whether the above-referenced partnership qualified for the small partnership exception to the unified examination and litigation procedures of I.R.C. §§ 6221 through 6233.

ISSUE

Whether the "same share" requirement of section 6231(a)(1)(B)(i)(II) had been satisfied whereby the partnership would qualify for the small partnership exception?

CONCLUSION

We agree with your conclusion that the partnership qualifies for the small partnership exception since the disproportionate allocation was due to a special allocation of section 704(c).

DISCUSSION

I.R.C. § 6231(a)(1)(D) excepts "small partnerships" from the examination and litigation procedures of sections 6221 through 6233. A small partnership is defined as a partnership with ten or fewer partners, each of whom is a natural person (other than a non-resident alien) or an estate, and each of whom's share of each partnership item is the same as his share of each other partnership item.

The facts outlined in the attached copy of your advisory opinion indicate that the partnership has two partners, each of whom is a natural person. Accordingly, we agree with your conclusion that the first prong of the statute has been satisfied. As noted in your advisory opinion, the real issue is whether the "same share" requirement has been satisfied.

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In determining whether each partner's share of each partnership item is the same as his share of every other item, the Service applies the "bright line test" articulated in Harrell v. Commissioner, 91 T.C. 242 (1988). If any disproportionate allocations are identified, the Service applies a facts and circumstances test to determine whether the disproportionate allocations are due to section 704(c), or because of basis adjustments pursuant to sections 734, 743 or 754. The regulations provide that if the allocations are due to any of the above-listed sections, then the same share requirement is not violated and the deficiency procedures should be followed. Temp. Treas. Reg. § 301.6231(a)-1T(a)(3).

In this case, there was a disproportionate allocation reported on the partnership's [redacted] return and the attached Schedule K-1's. The partnership indicated that this disproportionate allocation was due to section 754. However, in applying the facts and circumstances test, it appears that the disproportionate allocation was due to a basis adjustment under section 704(c). Accordingly, we concur with your conclusion that the same share requirement was satisfied since the disproportionate allocation was due to a special allocation pursuant to section 704(c).

If you have any additional questions regarding this matter, please contact Vada Waters at (PTS) 566-3289.

CURTIS G. WILSON